

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

KENNETH CULBREATH,

Plaintiff,

v.

CRIMINAL NO. 1:07cv113  
(Judge Keeley)

HARLEY LIPTTON, Ex. Dir. Bureau  
of Prisons, JOYCE FRANCIS, Warden  
F.C.I. Gilmer, E, MACE, DO, Clinical  
Director F.C.I. Gilmer, SPEARS, Food  
Service Administrator, WILSON, Assistant  
Food Service Administrator, HORBAT CO.,  
U.S. ATTY, For Northern District of West  
Virginia, JOHN DOE, JANE DOE, and ALL  
UNKNOWN PARTIES,

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION

On August 22, 2007, the pro se plaintiff, Kenneth Culbreath ("Culbreath"), a prisoner at the Federal Correctional Institution in Gilmer County, West Virginia ("FCI-Gilmer"), filed a civil rights complaint pursuant to Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971). Pursuant to Local Rule of Prisoner Litigation 83.02, United States Magistrate Judge James E. Seibert conducted an initial review and entered a Report and Recommendation ("R&R") on July 22, 2008.

Within that R&R, the Magistrate Judge recommended that this Court dismiss with prejudice all claims against Harley Lappin ("Lappin"), Joyce Francis ("Francis"), E. Mace ("Mace"), CO Hobrat,

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**ORDER ADOPTING REPORT AND RECOMMENDATION**

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the United States Attorney for the Northern District of West Virginia (the "U.S. Attorney"), John Doe, Jane Doe, and all Unknown Parties. Magistrate Judge Seibert also recommended that the claims against Spears, Wilson and Miller proceed.

Magistrate Judge Seibert's Report and Recommendation informed Culbreath that failure to object to the recommendations would result in the waiver of his appellate rights on those issues. On August 5, 2008, Culbreath filed objections to the R&R. In his objections, Culbreath only objects to this Court dismissing Mace from this case. He does not object to Magistrate Judge Seibert's other recommendations.

Upon de novo review, the Court finds that the Magistrate Judge properly applied the controlling legal standard of Weller v. Dept. of Social Servs., 901 F.2d 384 (4<sup>th</sup> Cir. 1990), when he determined that this Court should dismiss Mace as a party because Culbreath has failed to allege any wrongdoing by Mace in the complaint.

Consequently, the Court **ADOPTS** the R&R in its entirety (dkt. no. 23) and **DISMISSES WITH PREJUDICE** all claims against Lappin, Francis, Mace, CO Hobrat, the U.S. Attorney, John Doe, Jane Doe, and all Unknown Parties. The Court **ORDERS** that Spears, Wilson and Miller be **SERVED** with a copy of the summons and complaint and

**ORDER ADOPTING REPORT AND RECOMMENDATION**

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**REFERS** this case back to Magistrate Judge Seibert for further proceedings on the merits.

It is so **ORDERED**.

The Clerk is directed to mail a copy of this Order to the pro se petitioner, certified mail, return receipt requested and counsel of record.

Dated: August 12, 2008.

/s/ Irene M. Keeley

IRENE M. KEELEY

UNITED STATES DISTRICT JUDGE